

**MINUTES OF THE
NASH COUNTY PLANNING BOARD MEETING
HELD TUESDAY, JANUARY 21, 2020 AT 7:00 P.M.
FREDERICK B. COOPER COMMISSIONERS ROOM
CLAUDE MAYO, JR. ADMINISTRATION BUILDING – THIRD FLOOR
120 WEST WASHINGTON STREET
NASHVILLE, NC 27856**

BOARD MEMBERS PRESENT

Leonard Breedlove, Chairman
Jeffrey Tobias, Vice-Chairman
Moses Brown, Jr.
Sandra Edwards
Jimmy Glover
DeLeon Parker, Jr.
Barbara Pulley
Chris Sandifer

BOARD MEMBERS ABSENT

Kevin Smith

STAFF MEMBERS PRESENT

Adam Tyson, Planning Director
Adam Culpepper, Senior Planner
Jessica Flores, Planning Technician

OTHERS PRESENT

Brent Bass	Anthony Erb	Steve Petty
Cathy Bass	Brett Hanna	Betty Jane Upchurch
Edward Bass	John Holder	David E. Upchurch
Terry Battle	Cory Howell	Julian Upchurch
Autry Bisette	Nick Kirkland	Michael Upchurch
John C. Clark	Laura B. Krantz	Roger Warren
Tommy Cleveland	David Manning	Vivian Warren
Forrest Coldren	Rae Manning	Tracie Winstead
Nathan Duggins	Phillip Martin	Rex Young
Jonathan Derrill Edwards		

1. Call to Order.

Chairman Breedlove called the meeting to order at 7:00 p.m.

2. Determination of a Quorum.

Chairman Breedlove recognized a quorum.

3. Approval of the Minutes of the December 16, 2019 Regular Meeting.

Chairman Breedlove noted that the preparation of the minutes of the December 16, 2019 regular meeting had been delayed and would be submitted for the Board's review and approval at a later date.

4. Text Amendment Request A-200101 made by Ecoplexus, Inc. to amend UDO Article XI, Section 11-4, Subsection 11-4.72(a)(C) in order to remove the building setback requirements applicable within solar farm facilities along interior property lines dividing separately owned lots.

Chairman Breedlove recognized Mr. Tyson to present the staff report for this item.

Mr. Tyson presented the staff report and supplemental materials related to Text Amendment Request A-200101 as submitted to the Board in the January 21, 2020 Nash County Planning Board agenda document. He noted that the Nash County Technical Review Committee (TRC) considered Text Amendment Request A-200101 on January 11, 2020 and recommended approval based on its determination that the proposed amendment is reasonable, in the public interest, and consistent with the recommendations of the Nash County Land Development Plan.

Mr. Sandifer asked if other types of land uses besides solar farms might be subject to similar building setback issues.

Mr. Tyson answered that he was not aware of any other land uses that would be subject to this particular issue.

Vice-Chairman Tobias asked how the amended regulations might affect lease agreements involving multiple property owners on the same project.

Mr. Tyson answered that if an individual property owner chose to end or not renew his or her lease agreement for the solar farm, then the solar panels would likely be removed from that property, however, the panels installed on the adjoining properties could remain immediately adjacent to the property boundary without a specific building setback separation distance.

Mr. Parker asked about the use of the terms "facility" and "project area" in the proposed text amendment.

The Board discussed a revision to the proposed amendment language in order to clarify its intention as follows:

"Solar farm facilities and structures shall conform to the principal building setback requirements of the zoning district in which they are located. Where a solar farm facility is located on multiple lots of record in separate ownership, the building setback requirements shall apply only to the exterior perimeter of the ~~total project area~~ property boundaries surrounding the facility and not to the interior property boundaries within the ~~project area~~ facility."

Mr. Tyson noted that Nathan Duggins with Tuggle Duggins P.A. was present at the meeting to represent the applicant, Ecoplexus, Inc.

Mr. Duggins addressed the Board in support of the proposed text amendment and explained that it was necessary due to the increased size of solar farms constructed across properties in multiple ownership.

There were no further questions.

BOARD ACTION: Mr. Parker offered a motion, which was duly seconded by Mr. Brown to recommend the following consistency statement related to Text Amendment Request A-200101 for consideration by the Nash County Board of Commissioners:

Text Amendment Request A-200101 is reasonable, in the public interest, and consistent with the recommendations of the Nash County Land Development Plan because:

- (1) The Nash County Land Development Plan does not specifically address development standards for solar farm facilities, leaving that task to the Unified Development Ordinance.
- (2) The application of the current minimum building setback requirements to the interior property boundaries of large solar farm facilities developed on multiple properties in separate ownership:
 - (a) Creates inefficient “gaps” within the project area that increase the overall required size of the facility; and
 - (b) Only serve to separate solar panel arrays from other solar panel arrays that all belong within the same contiguous, fenced facility.
- (3) The standard building setback requirements will continue to apply around the exterior perimeter of solar farm facility project areas.

The motion was unanimously carried.

BOARD ACTION: Mr. Parker offered a motion, which was duly seconded by Ms. Edwards to recommend approval of Text Amendment Request A-200101 as revised during the meeting for consideration by the Nash County Board of Commissioners. The motion was unanimously carried.

5. Conditional Use Permit Request CU-200101 made by Fresh Air Energy XXIII, LLC on behalf of the property owners - Family Acreage, LLC and the Heirs of J. E. Upchurch et al. - to authorize the development of the northern portion of the East Nash PV1, LLC photovoltaic solar farm on portions of two tracts of land totaling approximately 183 acres located at 1652 N Old Franklin Rd, Nashville, NC 27856 in the A1 (Agricultural) Zoning District.

Mr. Sandifer requested to recuse himself from voting on this agenda item because the applicant was one of his clients, although he was not familiar with this particular project.

Chairman Breedlove recognized Mr. Tyson to present the staff report for this item.

Mr. Tyson presented the staff report and supplemental materials related to Conditional Use Permit Request CU-200101 as submitted to the Board in the January 21, 2020 Nash County Planning Board agenda document. He noted that the Nash County Technical Review Committee (TRC) considered

Conditional Use Permit Request CU-200101 on January 3, 2020 and recommended approval based on and subject to the suggested conclusions with supporting findings of fact and the recommended permit conditions listed in the staff report.

Mr. Tyson noted that Nathan Duggins with Tuggle Duggins P.A. was present at the meeting to represent the applicant, Fresh Air Energy XXIII, LLC.

Mr. Duggins addressed the Board in support of the proposed conditional use permit and introduced the owners of the subject property that were present at the meeting including Mr. Upchurch, the Bass Family, and Mr. Edwards.

Phillip Martin, Director of Community Engagement at Ecoplexus Inc., addressed the Board in support of the proposed conditional use permit and explained the history and evolution of the project to its current form.

Tommy Cleveland, a professional engineer specializing in solar energy, addressed the Board in support of the proposed conditional use permit and specifically discussed the health and safety impacts of the project.

Vice-Chairman Tobias asked a question regarding the supporting data for Mr. Cleveland's comments.

Mr. Cleveland answered that his statements were based on his study of the expert literature available on solar energy system components, which are well understood by the scientific community, and that it was his conclusion from his observations of the construction and operation of these components that they pose no negative health impact.

Nick Kirkland with Kirkland Appraisals, LLC addressed the Board in support of the proposed conditional use permit and reviewed the results of the appraisal impact assessment prepared for the project, which concluded that the solar farm would have no impact on the value of adjoining or abutting property and would exist in harmony with the area in which it is to be located.

Mr. Duggins concluded the applicant's presentation by stating that, in his opinion, appropriate evidence had been offered to establish the findings of fact and to support the conclusions necessary for the approval of the requested conditional use permit.

There were no further questions.

BOARD ACTION: Mr. Parker offered a motion, which was duly seconded by Ms. Pulley to recommend the following conclusions with supporting findings of fact related to Conditional Use Permit Request CU-200101 for consideration by the Nash County Board of Commissioners:

- (1) The proposed development meets all the standards required by the Nash County Unified Development Ordinance, including the specific requirements of Article XI, Section 11-4, Subsection 11-4.72(a) for solar farm facilities because:**
 - (a) The proposed site is located in the A1 (Agricultural) Zoning District and a solar farm is a permitted land use in this district with the issuance of a conditional use permit by the Nash County Board of Commissioners.**

- (b) The proposed solar panel arrays are depicted on the submitted site plan to reach a maximum height of fifteen feet (15') above grade, not exceeding the maximum allowable height of twenty-five feet (25').
 - (c) The submitted site plan depicts the proposed solar farm facilities and structures to be in conformance with the principal building setback requirements of the A1 (Agricultural) Zoning District in which it will be located.
 - (d) The submitted site plan depicts the solar farm facility enclosed by a six-foot (6') high chain-link security fence topped with three-strand barbed wire.
 - (e) The submitted site plan depicts the location of the maximum potential extent of the solar panel array coverage on the subject properties meeting the required separation distances from the surrounding property lines. It also depicts the locations of the proposed substation, inverters, access drives, vegetative screening buffers, and areas to remain undisturbed for the protection of existing wetlands and riparian stream buffers. The site plan includes a scaled drawing of the proposed solar collector structures.
 - (f) No visual safety hazard is anticipated to be caused for motorists passing the solar farm facility because the photovoltaic cells will be treated with an anti-reflective coating in order to prevent glare.
 - (g) Solar farm facilities shall be removed, at the owner's expense, within one hundred eighty (180) days of a determination by the Zoning Administrator that the facility is no longer being maintained in an operable state of good repair, unless a different responsible party is identified by the lease agreement.
- (2) The proposed development will not materially endanger the public health or safety because:
- (a) The solar farm will be fenced and gated to control access to the facility.
 - (b) The solar farm facility will be constructed to meet all applicable construction codes.
 - (c) The solar panels that comprise the solar arrays are made primarily of glass and they do not contain dangerous materials, nor do they emit dust, noxious fumes, or liquids.
 - (d) The solar panels are designed to absorb light, rather than reflect it, which mitigates glare concerns for adjoining properties.
- (3) The proposed development will not substantially injure the value of adjoining or abutting property because:
- (a) The applicant cites previous appraisal reports which conclude that solar farms do not injure the value of adjoining or abutting properties.
 - (b) The solar farm facility generates minimal noise during operational daylight hours and no noise at night.
 - (c) The solar farm facility does not generate dust, fumes, or odors.
 - (d) After construction, the solar farm facility will generate no additional traffic with the exception of routine maintenance inspections or repairs.
 - (e) The solar farm facility shall be screened from view by the proposed existing or planted vegetative buffers.
- (4) The proposed development will be in harmony with the area in which it is to be located because:
- (a) As a relatively low-impact passive development, a solar farm facility is consistent with the land use pattern of the surrounding area, which includes existing agricultural, residential, and forested land uses.
 - (b) A solar farm facility generates less traffic than a typical residence or agricultural operation and the solar panel arrays are shorter in height than typical residential and agricultural structures in the area.

- (5) The proposed development will be in general conformity with the Nash County Land Development Plan because:
- (a) The Nash County Land Development Plan designates the subject property as a Suburban Growth Area.
 - (b) While the Land Development Plan does not specifically comment on solar farms as a potential land use, solar farm facilities have previously been determined to be compatible with the Suburban Growth Area because:
 - i) The solar farm facility is a relatively low-intensity land use consistent with the existing low-density residential and agricultural development pattern of the surrounding area.
 - ii) The solar farm facility does not require public infrastructure services such as the provision of a water supply or wastewater disposal services.
 - iii) The solar farm facility will provide a renewable, sustainable alternative source of energy to benefit the community.

The motion was unanimously carried with Mr. Sandifer not voting.

BOARD ACTION: Mr. Parker offered a motion, which was duly seconded by Mr. Brown to recommend approval of Conditional Use Permit Request CU-200101 for consideration by the Nash County Board of Commissioners, subject to the following suggested permit conditions:

- (1) The solar farm facility shall be developed on the subject properties in accordance with the submitted application materials, the approved site plan, and all applicable requirements of the Nash County Unified Development Ordinance.
- (2) All vegetative screening buffers shall be planted or preserved as depicted on the approved site plan and shall be maintained and/or replaced as necessary in order to provide effective visual screening of the solar farm facility.
- (3) Upon approval of the conditional use permit, the applicant shall submit the required permit recording fee made payable to the Nash County Register of Deeds.
- (4) Prior to the issuance of a construction authorization, the developer shall submit a revised site plan depicting the specific construction details of the solar farm facility.
- (5) The development of the solar farm facility shall be subject to the approval and issuance of the following additional permits and documents, as applicable:
 - (a) Sedimentation & Erosion Control Plan Approval, Riparian Stream Buffer Determinations, and Stream Crossing Approvals issued by the N.C. Department of Environmental Quality;
 - (b) Driveway Permits issued by the N.C. Department of Transportation;
 - (c) Demolition Permit issued by the Nash County Planning & Inspections Department and Well and/or Wastewater System Abandonment Permits issued by the Nash County Environmental Health Division (if necessary) for the existing structures located at 1652 N Old Franklin Rd;
 - (d) Tar-Pamlico River Basin Overlay District Stormwater Permit issued by the Nash County Planning & Inspections Department; and
 - (e) Zoning Permit and Electrical Permit issued by the Nash County Planning & Inspections Department.
- (6) The landowner(s) of record shall be responsible for the deconstruction and removal of the solar farm at such time that the facility is either decommissioned or abandoned in accordance with the requirements of UDO Article XI, Section 11-4, Subsection 11-4.72(a)(G).

The motion was unanimously carried with Mr. Sandifer not voting.

6. **Conditional Use Permit CU-190701 Amendment Request made by Phobos Solar, LLC on behalf of the property owner, Tracie Winstead, to authorize the expansion of a previously approved photovoltaic solar farm to include an additional approximately 24 acre portion of an approximately 40 acre tract of land located at 2949 Old Nash Rd and 3951 & 3990 Frazier Rd, Middlesex, NC 27557 in the A1 (Agricultural) Zoning District.**

Mr. Tyson recognized Mr. Culpepper to present the staff report for this item.

Mr. Culpepper presented the staff report and supplemental materials related to the request to amend Conditional Use Permit CU-190701 as submitted to the Board in the January 21, 2020 Nash County Planning Board agenda document. He noted that the Nash County Technical Review Committee (TRC) considered the request to amend Conditional Use Permit CU-190701 on January 3, 2020 and recommended approval based on the suggested conclusions with supporting findings of fact listed in the staff report.

Mr. Tyson noted that all the findings of fact and conclusions cited in the originally issued Conditional Use Permit CU-190701 would remain applicable unless the Board identifies a unique circumstance particularly related to the additional property.

Mr. Tyson noted that Brett Hanna with Nelson Mullins was present at the meeting to represent the applicant, Phobos Solar, LLC.

Mr. Hanna addressed the Board in support of the proposed conditional use permit and explained that this particular parcel was originally intended to be part of the project area, however, a lease agreement was only recently reached with the property owner which would formally allow its inclusion.

Mr. Sandifer asked about the application of screening buffers and minimum building setbacks to this expansion of the project.

Mr. Tyson answered that the additional property would be subject to the same buffering and setback requirements as the rest of the previously approved project.

Mr. Steve Petty addressed the Board on behalf of the owner of the adjacent property located at 4152 Frazier Road and expressed concern regarding continued access to that property via a farm path after the construction of the solar farm facility.

Mr. Hanna noted that the applicant could not establish an easement to the subject property because they were not the actual owner of the underlying land, however, he agreed to offer an additional permit condition that would provide a thirty-foot (30') wide access route for pedestrian and vehicular traffic from Frazier Road to the subject property which shall remain open at all times during the term of the solar farm facility's lease agreement.

There were no further questions.

BOARD ACTION: Mr. Parker offered a motion, which was duly seconded by Ms. Edwards to recommend the following conclusions with supporting findings of fact related to the request to

amend Conditional Use Permit CU-190701 for consideration by the Nash County Board of Commissioners:

- (1) The proposed development meets all the standards required by the Nash County Unified Development Ordinance, including the specific requirements of Article XI, Section 11-4, Subsection 11-4.72(a) for solar farm facilities because the subject property is located in the A1 (Agricultural) Zoning District and the expanded area of the facility is proposed to be constructed to the same design standards as the previously approved portion of the Phobos Solar Farm.
- (2) The proposed development will not materially endanger the public health or safety because there is no evidence that the expanded area of the solar farm facility will pose any unique threat not already considered in relation to the previously approved portion of the Phobos Solar Farm.
- (3) The proposed development will not substantially injure the value of adjoining or abutting property because the applicant has submitted a property impact report for the proposed expansion of the previously approved Phobos Solar Farm prepared by Richard C. Kirkland, Jr., MAI of Kirkland Appraisals, LLC which concludes that in his professional opinion, "the solar farm proposed at the subject property will have no impact on the value of adjoining or abutting property."
- (4) The proposed development will be in harmony with the area in which it is to be located because the applicant has submitted a property impact report for the proposed expansion of the previously approved Phobos Solar Farm prepared by Richard C. Kirkland, Jr., MAI of Kirkland Appraisals, LLC which concludes that in his professional opinion, "the proposed use is in harmony with the area in which it is located" due to "some of the positive implications of a solar farm" including "protection from future development of residential developments or other more intrusive uses, reduced dust, odor and chemicals from former farming operations, protection from light pollution at night, it's quiet, and there is no traffic."
- (5) The proposed development will be in general conformity with the Nash County Land Development Plan because the subject property is designated as Suburban Growth Area and solar farm facilities have previously been determined to be compatible with the Suburban Growth Area because they are a relatively low-intensity land use that does not require public infrastructure services (water supply or wastewater disposal) and that provides a renewable, sustainable alternative source of energy to benefit the community.

The motion was unanimously carried.

BOARD ACTION: Mr. Parker offered a motion, which was duly seconded by Ms. Edwards to recommend approval of the request to amend Conditional Use Permit CU-190701 in order to authorize the expansion of the previously approved Phobos Solar Farm to include the subject property for consideration by the Nash County Board of Commissioners, subject to the following suggested condition:

A thirty-foot (30') wide access route for pedestrian and vehicular traffic to be depicted on the submitted site plan from Frazier Road across the property identified as Tax Parcel ID #003971 currently in the ownership of R. Autry Bisette to the immediately adjacent properties to the west identified as Tax Parcel ID #035924 at 4124 Frazier Rd currently in the ownership of Pamela Morgan Smith & Glen A. Smith and Tax Parcel ID #004145 at 4152 Frazier Rd currently

in the ownership of David Manning & Hilda Rae Manning shall remain open at all times during the term of Phobos Solar, LLC's leasehold interest in the subject property.

The motion was unanimously carried.

7. Other Business.

Mr. Tyson provided an update to the Board on the planning actions taken by the Nash County Board of Commissioners at their January 6, 2020 meeting, including the approval of General Rezoning Request Z-191201 to rezone the 37.78 acre campus of The Free Will Baptist Children's Home, Inc. at 7907 Buck Deans Rd to OI (Office & Institutional) and the approval of Conditional Use Permit CU-091102 Amendment Request to permit "miscellaneous retail sales (party supplies/rentals and used merchandise store)" within the 0.8 acre RC-CU (Rural Commercial Conditional Use) Zoning District located at 7442 S NC Highway 58.

Mr. Tyson reminded the Board of the upcoming Nash County Joint Strategic Land Use Planning Workshop to be held on Tuesday, February 11, 2020 from 6:00 p.m. to 8:30 p.m., which will be facilitated by Bruce Naegelen with the N.C. Department of Commerce Main Street & Rural Planning Center.

8. Adjournment.

There being no further business, Chairman Breedlove adjourned the meeting at 8:09 p.m.